

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 3533



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION

2018 DEC -3 AM 10:28

SENSITIVE

December 3, 2018

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP of Mark*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Kristin D. Roser/Ben Holly *KDR BH*
Reports Analysis Division
Compliance Branch

SUBJECT: Withdrawal and Resubmission of Reason To Believe Recommendation – 2018
October Quarterly Report (Non-Election Sensitive) for the Administrative
Fine Program

We are withdrawing the document circulated to the Commission on November 29, 2018 in order to remove two committees that filed a report which would exclude them from the administrative fine program for the 2018 October Quarterly Report. The report was received by the Commission after the RTB Recommendation was circulated, but before the vote due date.

Attached is a list of political committees and their treasurers who failed to file the 2018 October Quarterly Report (Non-Election Sensitive) in accordance with 52 U.S.C. § 30104(a). The October Quarterly Report was due on October 15, 2018.

The committees listed on the attached RTB Circulation Report either failed to file the report, filed the report no more than thirty (30) days after the due date (considered a late filed report), or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for

reports at 11 C.F.R. 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

12/3/2018 9:19 AM

Federal Election Commission
Reason to Believe Circulation Report
2018 OCTOBER QUARTERLY Not Election Sensitive 10/15/2018 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
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3528	C00641035	JEFF BEALS FOR CONGRESS	JEFFREY BEALS	ALLEN BEALS	\$715,694	0		Not Filed	\$119,282 (est)	\$6,380
3528	C00661173	L'ITALIEN FOR CONGRESS	BARBARA L'ITALIEN	ANNETTE GRAMS	\$1,683,650	0	10/26/2018	11	\$250,972	\$5,240

12/3/2018 9:19 AM

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
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3533	C00634873	NEILL FOR ILLINOIS	NEILL MOHAMMAD	ANDREW NALL	\$426,285	0	10/29/2018	14	\$4,778	\$118
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3544	C00614305	VOLUNTEERS FOR NEHLEN	PAUL NEHLEN	PAUL NEHLEN	\$405,238	0		Not Filed	\$57,891 (est)	\$3,828
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* Per CFR § 104.18, this committee is required to file electronic reports. The committee filed the 2018 October Quarterly Report on paper; therefore, the report is considered not filed. Although not considered an acceptable filing, the financial activity on the paper report was used to calculate the committee's level of activity for the reporting period.

** The committee filed their report more than thirty (30) days after the due date; therefore, the report is considered not filed.

Introduction

))))))

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JEFF BEALS FOR CONGRESS, and
BEALS, ALLEN as treasurer;

) AF# 3526
)

L'ITALIEN FOR CONGRESS, and
GRAMS, ANNETTE as treasurer;

) AF# 3528
)

NEILL FOR ILLINOIS, and NALL,
ANDREW as treasurer;

) AF# 3533
)

VOLUNTEERS FOR NEHLEN, and
NEHLEN, PAUL as treasurer;

) AF# 3544
)

12/04/2018 10:00 AM

CERTIFICATION

I, Dayna C. Brown, Secretary and Clerk of the Federal Election Commission,
do hereby certify that on December 04, 2018 the Commission took the following
actions on the Withdrawal and Resubmission of Reason To Believe Recommendation
- 2018 October Quarterly Report (Non-Election Sensitive) for the Administrative Fine
Program as recommended in the Reports Analysis Division's Memorandum dated
December 03, 2018, on the following committees:

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UNCLASSIFIED

AF#3526 Decided by a vote of 4-0 to: (1) find reason to believe that JEFF BEALS FOR CONGRESS, and BEALS, ALLEN in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#3528 Decided by a vote of 4-0 to: (1) find reason to believe that L'ITALIEN FOR CONGRESS, and GRAMS, ANNETTE in her official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

1800-271-0017

AF#3533 Decided by a vote of 4-0 to: (1) find reason to believe that NEILL FOR ILLINOIS, and NALL, ANDREW in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

COUNCILMAN NEHLEN

AF#3544 Decided by a vote of 4-0 to: (1) find reason to believe that VOLUNTEERS FOR NEHLEN, and NEHLEN, PAUL in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision.

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Attest:

December 6, 2018
Date

Dayna C. Brown
Dayna C. Brown
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 6, 2018

Andrew Nall, in official capacity as Treasurer
Neill for Illinois
16283 Waterman Rd.
DeKalb, IL 60115

C00634873
AF#: 3533

Dear Mr. Nall:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file an October Quarterly Report of Receipts and Disbursements every calendar year. This report, covering the period July 1, 2018 through September 30, 2018, shall be filed no later than October 15, 2018. 52 U.S.C. § 30104(a). Records at the Federal Election Commission ("FEC") indicate that this report was filed on October 29, 2018, 14 days late.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109g(a)(4). On December 4, 2018, the FEC found that there is reason to believe ("RTB") that Neill for Illinois and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before October 15, 2018. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$118. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. Your payment of \$118 is due within forty (40) days of the finding, or by January 13, 2019, and is based on these factors:

Election Sensitivity of Report: Not Election Sensitive
Level of Activity: \$4,776
Number of Days Late: 14
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review, 1050 First

Street, NE, Washington, DC 20002. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or January 13, 2019. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Neill for Illinois and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Aimee Wechsler in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

Carole C. Hunter

Caroline C. Hunter
Chair

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$118 for the 2018 October Quarterly Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Neill for Illinois

FEC ID#: C00634873

AF#: 3533

PAYMENT DUE DATE: January 13, 2019

PAYMENT AMOUNT DUE: \$118

Federal Election Commission
Office of Administrative Review
1050 First Street NE
Washington, DC 20002

C00634873

AF#: 3533

To Whom it May Concern:

We are responding to a recent letter received from the FEC regarding the candidate campaign committee "NEILL FOR ILLINOIS," which is the principal campaign committee for Dr. Neill Mohammad, a Democratic candidate for Congress in Illinois' 16th Congressional District. Dr. Mohammad lost the Democratic primary election in Illinois March 20th, 2018.

We are responding to a "reason to believe" (RTB) statement issued by the FEC and dated December 6th, 2018, regarding this committee's failure to file a quarterly report dated October 15, 2018, covering campaign-related activity during the period July 1st 2018 through September 30th, 2018.

We are asking that the FEC set aside this RTB statement and elect to not impose a fine under the premise that "the committee used its best efforts to file" 11 CFR §111.35(b).3.

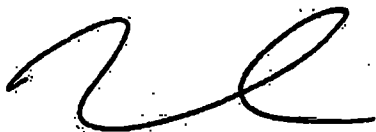
In this case, the committee was originally notified of a similar failure to file a quarterly report covering the period April 1st, 2018 through June 30th, 2018 via electronic mail on October 24th, 2018.¹ Upon receiving that notification, the committee prepared and filed both its July 15 and October 15 reports on October 29th, 2018. That October 15 reports contains the data on which the RTB in this case was prepared, including its estimate of quarterly financial activity for the purpose of calculating an administrative fine 11 CFR 111.43(a).

The October 15th report covered \$4,776.75 in total turnover, which was the total used to calculate the potential administrative fine in the current case. Of that total, however, \$4,322.32 represented Dr. Mohammad's personal campaign contributions for the purpose of settling debts and obligations incurred prior to the March 20th primary. Only \$454.43 in residual operating expenses were incurred during the July – October reporting period, and no contributions were received or solicited from outside sources.

Given that the committee filed this report *at its first opportunity after receiving notice that the report was, in fact, required*, and given that the true amount of financial activity during this period was less than \$500, we are asking that the October filing be considered as having been filed "using its best efforts." The committee has accepted its responsibility and fine in the case AF #3463; imposing an additional fine despite having reacted with maximum speed to the FEC's initial notification is needlessly punitive.

¹ That case was identified as AF# 3463.

Please direct your acknowledgment of this challenge by electronic mail to both Andy Nall (andynall23@gmail.com) and Neill Mohammad (neill.mohammad@gmail.com) in addition to any written correspondence.



Dr. Neill Mohammad, Candidate



Andy Nall, Treasurer

/



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 13, 2019

**REVIEWING OFFICER RECOMMENDATION
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 3533 - Neill for Illinois and Andrew Nall, in his official capacity as Treasurer (C00634873)

Summary of Recommendation

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$118 civil money penalty.

Reason-to-Believe Background

The 2018 October Quarterly Report was due on October 15, 2018. The respondents filed the report on October 29, 2018, 14 days late. The report is not election sensitive and was filed within 30 days of the due date; therefore, the report is considered late. 11 C.F.R. §§ 111.43(d)(1) and (e)(1).

On December 4, 2018, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2018 October Quarterly Report and made a preliminary determination that the civil money penalty was \$118 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter was mailed to the respondents' address of record from the Reports Analysis Division ("RAD") on December 6, 2018 to notify them of the Commission's RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act ("Act") states that the treasurer of a principal campaign committee shall file a report for the quarter ending September 30 no later than October 15. 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(a)(1)(i). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Summary of Respondents' Challenge

On January 28, 2019, the Commission received the written response ("challenge") from the Candidate and Treasurer. The respondents explain that they became aware of the missing 2018 October Quarterly Report on October 24, 2018, upon receiving a notification regarding their failure to file the 2018 July Quarterly Report. The Committee filed both reports on October 29, 2018. The respondents request that the Commission waive the penalty and further explain:

The October 15th report covered \$4,776.75 in total turnover, which was the total used to calculate the potential administrative fine in the current case. Of that total, however, \$4,322.32 represented Dr. Mohammad's personal campaign contributions for the purpose of settling debts and obligations incurred prior to the March 20th primary. Only \$454.43 in residual operating expenses were incurred during the July - October reporting period, and no contributions were received or solicited from outside sources.

Given that the committee filed this report *at its first opportunity after receiving notice that the report was, in fact, required*, and given that the true amount of financial activity during this period was less than \$500, we are asking that the October filing be considered as having been filed "using its best efforts." (emphasis included) The committee has accepted its responsibility and fine in the case AF #3463; imposing an additional fine despite having reacted with maximum speed to the FEC's initial notification is needlessly punitive.

Analysis

The respondents indicate they may not have been aware of their requirement to file the 2018 October Quarterly Report. However, Commission records indicate they were notified of their 2018 October Quarterly reporting requirement on multiple occasions prior to the filing deadline. On September 27, 2018, the Commission's Information Division sent the 2018 October Quarterly Report Prior Notice to "neill.mohammad@gmail.com" and "andynall23@gmail.com," the email addresses listed on the Committee's Statement of Organization. Then on October 10, 2018, the Commission's Electronic Filing Office ("EFO") sent a reminder email regarding the 2018 October Quarterly Report to the same email addresses. On October 16, 2018, the day following the filing deadline, EFO sent a late notification email to the same email addresses because the report had not yet been filed. Based on these notifications, the respondents should have been aware of the 2018 October Quarterly Report filing requirement.

The respondents request that the Commission consider the Committee filed the report "using its best efforts." The Commission states in its *Explanation and Justification for Revised 11 CFR § 111.35(b)(3) - "Best Efforts" Defense*, 72 Fed. Reg. 14662, 14664-14666 (Mar. 29, 2007) that respondents must show

...that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...[T]his rule requires a strict causal relationship between the circumstances described in the challenge...and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The

circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. (emphasis included)

The respondents do not explain how an unforeseen circumstance directly prevented the respondents from filing the report. Further, failure to know filing dates is included at 11 C.F.R. § 111.35(d) as an example of a circumstance that will not be considered reasonably unforeseen and beyond the respondents' control. Therefore, the "best efforts" defense does not succeed.

For the purpose of calculating the civil money penalty, the level of activity for an authorized committee is the total amount of receipts and disbursements for the period covered by the late report. 11 C.F.R. § 111.43(d)(3)(i). The Reviewing Officer confirms that contributions from the Candidate should be included in the level of activity. The Committee filed the report on October 29, 2018, 14 days late. The report discloses \$4,322 in total receipts and \$454 in total disbursements. Therefore, the level of activity of the 2018 October Quarterly Report is \$4,776. Using the schedule of penalties at 11 C.F.R. § 111.43(a) for the level of activity bracket of \$1 - \$4,999.99, the civil money penalty is $\$118 \times [1 + (.25 \times 0 \text{ previous violations})]$ or \$118.

The Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$118 civil money penalty.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 3533 involving Neill for Illinois and Andrew Nall, in his official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 3533 that Neill for Illinois and Andrew Nall, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$118 civil money penalty; and
3. Send the appropriate letter.

Attachments

- Attachment 1 –
- Attachment 2 –
- Attachment 3 –
- Attachment 4 – *Explanation and Justification*, 72 Fed. Reg. 14662-14668 (Mar. 29, 2007)
- Attachment 5 – Declaration from RAD
- Attachment 6 – Declaration from OAR

extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2005 of \$12.72 per pound for Scotch spearmint oil and \$9.84 per pound for Native spearmint oil.

During the period of 1998 through 2005, however, large production and carry-in inventories have contributed to prices below the 26-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from \$8.00 to \$11.00 per pound for Scotch spearmint oil and between \$9.10 and \$10.00 per pound for Native spearmint oil. The 2005 Native price exceeded the 26-year average by \$0.16. Producers stated, however, that fuel cost increases more than offset the price increase.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 4, 2006, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the Federal Register on January 22, 2007 (71 FR 2639). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested person. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 21, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.226 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.226 Salable quantities and allotment percentages—2007–2008 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2007, shall be as follows:

(a) *Class 1 (Scotch) oil*—a salable quantity of 886,667 pounds and an allotment percentage of 45 percent.

(b) *Class 3 (Native) oil*—a salable quantity of 1,062,336 pounds and an allotment percentage of 48 percent.

Dated: March 23, 2007.

Lloyd C. Day,
Administrator, Agricultural Marketing
Service.

[FR Doc. E7–5811 Filed 3–28–07; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–7]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to amend four aspects of its Administrative Fines Program ("AFP"), a streamlined process through which the Commission assesses civil money penalties for late filers and non-filers under the Federal Election Campaign Act of 1971, as amended ("FECA"). First, the Commission is revising its rules regarding the permissible grounds for challenging a proposed civil money penalty by clarifying the scope of the defense based on factual errors. Second, the Commission is incorporating a defense for political committees that demonstrate that they used their best efforts to file reports timely. Third, the Commission is revising its rules regarding its final determinations to clarify when the Commission finds that no violation has occurred. Lastly, the rules are being amended to explain that the Commission's statement of reasons for its final decision in an AFP matter usually consists of the reasons set forth by the Commission's reviewing officer as adopted by the Commission. The supplementary information that follows provides further information.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Through the AFP, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures reserved for more serious violations under 2 U.S.C.

437g. See 2 U.S.C. 437g(a)(4)(C).¹ Congress intended the Commission to process these straightforward violations through a "simplified procedure" that would ease the enforcement burden on the Commission. See H.R. Rep. No. 106-295, at 11-12 (1999). The rules governing the AFP create a streamlined procedure that balances the respondent's rights to notice and opportunity to be heard with the need to operate the AFP in an expeditious manner without undue administrative burden. See Explanation and Justification for Final Rule on Administrative Fines, 65 FR 31787, 31788 (May 19, 2000) ("Admin Fines E&J").²

When the Commission finds reason to believe ("RTB") that a political committee and its treasurer ("respondents") violated the reporting requirements, the respondents may challenge the finding and the proposed civil money penalty only for certain specified reasons. See revised 11 CFR 111.35. The Commission's reviewing officer considers the challenge and forwards a recommendation to the Commission. See 11 CFR 111.36(e). After considering the challenge, the reviewing officer's recommendation, and any subsequent comments from the respondent regarding the recommendation, the Commission makes a final determination. See revised 11 CFR 111.37. The Commission assesses civil money penalties based on published penalty schedules set forth in 11 CFR 111.43. Respondents may challenge the Commission's final determination in U.S. District Court. See 2 U.S.C. 437g(a)(4)(C)(iii); 11 CFR 111.38.

In *Lovely v. FEC*, 307 F. Supp. 2d 294 (D. Mass. 2004), a political committee challenged a civil money penalty assessed by the Commission through the AFP. The political committee argued that it had used its best efforts to file the report in question and that this constituted a valid and complete defense under FECA's "best efforts" provision in 2 U.S.C. 432(i). See *Lovely*, 307 F. Supp. 2d at 299. Section 432(i) provides that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political

committee, any report or any records of such committee shall be considered in compliance with [FECA]." 2 U.S.C. 432(i).³ The *Lovely* court concluded that the plain language of FECA requires the Commission to consider the "best efforts" defense in the AFP, and that the record in the *Lovely* case did not establish whether the Commission had considered that defense. See *Lovely*, 307 F. Supp. 2d at 300-01. The court remanded the case to the Commission for further proceedings. See *id.* at 301. On remand, the Commission determined that the political committee had failed to show it used best efforts to file timely and confirmed the earlier imposition of the civil money penalty. See *Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005), available at http://www.fec.gov/law/law_rulemakings.shtml under the heading "Best Efforts in Administrative Fines Challenges."

Although the *Lovely* decision did not directly challenge the AFP rules, and did not affect the validity of 11 CFR 111.35 or the Commission's consideration of any other AFP matters, the Commission opted to open a rulemaking by publishing a Notice of Proposed Rulemaking on December 8, 2006, to seek public comment on proposed revisions to the AFP based on the court's concerns. See *Notice of Proposed Rulemaking for Best Efforts in Administrative Fines Challenges*, 71 FR 71093 (Dec. 8, 2006) ("NPRM"). The Commission received two comments, which are available at http://www.fec.gov/law/law_rulemakings.shtml under the heading "Best Efforts in Administrative Fines Challenges."⁴ One comment made several recommendations as to how the Commission could further clarify the "best efforts" defense by incorporating the business management concept of "best practices" regarding corporate operation, financial controls, risk prevention and risk assessment, while

the other comment was not relevant to this rulemaking.

After consideration of the relevant comment, the Commission has decided to revise its rules governing the AFP in four ways, as described below: (1) Clarifying the scope of the "factual errors" defense; (2) incorporating a "best efforts" defense for challenges to RTB findings; (3) clarifying when the Commission may find that no violation has occurred in an AFP matter; and (4) explaining the procedure for issuing Commission statements of reasons for AFP final determinations. These changes address the concerns raised by the *Lovely* court and provide greater clarity regarding permissible grounds for challenging an RTB finding. The revisions are substantially similar to those proposed in the NPRM.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the Federal Register at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 23, 2007.

Explanation And Justification

I. Revised 11 CFR 111.35—Respondent Challenges to Reason To Believe Finding or Proposed Civil Money Penalty

Revised section 111.35 sets forth the requirements for AFP respondents' challenges to RTB findings and proposed civil money penalties. Revised section 111.35(a) is clarified so that it applies only to respondents that seek to challenge an RTB finding or proposed civil money penalty.⁵ The Commission is reorganizing and clarifying section 111.35 so that respondents may easily identify the basis for challenges in the AFP. See revised 11 CFR 111.35(b).

A. Revised 11 CFR 111.35(b)(1)—Changes to the "Factual Errors" Defense

The NPRM sought comment on proposed clarifications to the "factual errors" defense and asked whether the regulation should include examples of the types of factual errors that would suffice as grounds for challenging an RTB finding. See NPRM, 71 FR at 71094. The comment did not address this issue. The Commission has decided to revise

¹ The AFP applies to violations of the reporting requirements by political committees and their treasurers. See 11 CFR 111.30.

² The AFP is set to expire on December 31, 2008. See Pub. L. No. 109-115, sec. 721, 119 Stat. 2396, 2493-94 (2005); *Final Rule on Extension of Administrative Fines Program*, 70 FR 75717 (Dec. 21, 2005) (extending the sunset date in 11 CFR 111.30 to Dec. 31, 2008).

³ The Commission had long interpreted the "best efforts" safe harbor to be limited to political committees' obligation to report certain substantive information that may be beyond the control of the committees to obtain. See 11 CFR 104.7 (defining "best efforts" for purposes of obtaining and submitting contributor information). The Commission is currently considering in a separate proceeding whether to revise its application of this provision in enforcement matters outside the scope of the AFP. See *Proposed Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 71 FR 71084 (Dec. 8, 2006). The Commission anticipates issuing a final policy statement this year.

⁴ The Internal Revenue Service did not comment on the NPRM.

⁵ The revisions to section 111.35(a) did not alter the basic timing requirement that a respondent must file a challenge with the Commission within forty (40) days of when the Commission issues its reason to believe finding. See revised 111.35(a); *Admin Fines E&J*, 65 FR at 31789.

the rule regarding the "factual errors" defense as proposed in the *NPRM*, except for stylistic changes. The revised rule states that the facts alleged to be in error must be facts upon which the Commission relied in its RTB finding. See revised 11 CFR 111.35(b)(1). Thus, a respondent may not challenge an RTB finding based on factual errors that are irrelevant to the Commission's actual RTB finding, such as errors in the RTB finding regarding individual names or titles of committee staff.

The revised rule provides two examples of the type of factual errors that would properly support a challenge: the respondent was not required to file the report in question, and the respondent did in fact timely file as described in 11 CFR 100.19. See revised 11 CFR 111.35(b)(1). For example, a political committee that is not subject to electronic filing requirements could challenge an RTB finding and proposed civil money penalty under section 111.35(b)(1) by showing that the paper copy was filed on time and the Commission relied on the factual error that the committee was required instead to file electronically. See 11 CFR 104.18(a). As referenced in the rule's second example, Commission rules currently state that certain reports are "timely filed" if they are deposited as registered or certified mail with the U.S. Post Office, as Priority Mail or Express Mail through the U.S. Post Office, or with an overnight delivery service to be delivered the next business day with a postmark no later than 11:59 p.m. EST on the filing date. See 11 CFR 100.19(b). Thus, a respondent who is not required to file electronically could challenge an RTB finding based on evidence that it deposited the report in the proper manner pursuant to section 100.19(b) on the filing date, even if the Commission did not receive the report because of a delivery failure by the U.S. Post Office or other delivery service. The Commission emphasizes that the revisions to section 111.35(b)(1) do not create any new "factual errors" defenses, but simply recognize the types of errors that the Commission has accepted previously as a defense in the AFP.

B. Revised 11 CFR 111.35(b)(3)—"Best Efforts" Defense

The *NPRM* also sought comment on whether to replace the "extraordinary circumstances" defense in the prior rule with a "best efforts" defense for challenging an RTB finding based upon 2 U.S.C. 432(i). See *NPRM*, 71 FR at 71094-95 and former 11 CFR 111.35(b)(1)(iii). The comment generally supported the idea of a "best efforts"

defense. The Commission has decided to adopt the *Lovely* court's interpretation of 2 U.S.C. 432(i) and to incorporate a "best efforts" defense into the AFP. It appears in revised 11 CFR 111.35(b)(3) and is the same as the proposed rule, except for the changes noted below. The "best efforts" defense in the revised rule completely replaces the prior "extraordinary circumstances" defense because the two defenses are largely coextensive. The Commission reiterates its policy determination, as stated in the initial rulemaking for the AFP, that respondents' defenses in the AFP should be limited because the complete and timely disclosure of the political committee's financial activity is a "cornerstone of campaign finance law." See *Admin Fines E&J*, 65 FR at 31789.

The *Lovely* court recognized that the Commission could "refine by regulation what best efforts means in the context of submitting a report." *Lovely*, 307 F. Supp. 2d at 300. In exercising its authority to interpret how to incorporate a "best efforts" defense into the AFP rules, the Commission is mindful of the statutory terms chosen by Congress. As also explained by the Commission in its statement of reasons in the *Lovely* case after remand, section 432(i) creates a safe harbor for treasurers who demonstrate that best efforts have been used to submit reports required by FECA. "Best" is an adjective of the superlative degree. Therefore, best efforts requires more than "some" or "good" efforts. Section 432(i)'s use of the phrase "best efforts," instead of a "good faith" standard, means that an AFP respondent cannot rely upon the state of mind of the committee's treasurer or staff to claim this defense.⁶ Instead, the Commission's revised rule at 11 CFR 111.35(b)(3), which sets forth the "best efforts" defense, focuses on actions taken by the respondent committee or treasurer to comply with reporting deadlines.

The "best efforts" defense is described in the revised rule as a two-part test. The AFP respondent must demonstrate that: (1) The respondent was prevented from filing in a timely manner by "reasonably unforeseen circumstances that were beyond the control" of the respondent; and (2) the respondent filed the report in question no later than 24 hours after the end of the reasonably unforeseen circumstances preventing the timely filing. See revised 11 CFR 111.35(b)(3). The Commission believes this test is straightforward and should be easy for

respondents to understand and document in their written responses. The final rule differs slightly from the proposed rule, which would have stated that the respondent must be prevented from filing in a timely manner by "unforeseen" circumstances. The Commission is making this change to emphasize that the "best efforts" defense is an objective test, which uses a reasonable person standard and does not depend upon the committee's treasurer or staff's subjective ability to foresee a particular circumstance. The examples included in the rule in 11 CFR 111.35(c) and (d), described below, illustrate how this defense operates as an objective test.

Under the first part of the defense, the respondent bears the burden of showing that the reasonably unforeseen circumstances in fact prevented the timely and proper filing of the required report. The *NPRM* requested public comment regarding whether the Commission should apply a "but for" or "contributing factor" test for determining whether a respondent was prevented from timely filing under the rule. See *NPRM*, 71 FR at 71095. The comment did not address this issue. The Commission has decided that this rule requires a strict causal relationship between the circumstances described in the challenge (such as a natural disaster) and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be unable to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. "Best efforts" is a high standard set by FECA, and the Commission reminds respondents that there are multiple ways for a committee to file required reports properly and timely. See, e.g., 11 CFR 100.19(b) (political committees not required to file electronically may file on paper by hand delivery, first class, registered, certified, Priority or Express U.S. Mail, or overnight delivery service); 11 CFR 104.18 (mandatory electronic filings accepted through the Commission's filing system via internet, modem, or by submission of diskette or CD). If the respondent is prevented from using one method of filing by a problem (such as a technical problem with the Commission's modems), the respondent cannot claim the "best efforts" defense if it did not attempt to use other available methods to file timely (such as

⁶ See *Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005).

submission on a diskette or CD).⁷ Therefore, to satisfy the "best efforts" defense, a respondent must demonstrate that it attempted to use all available methods to file, but that timely filing by each method was prevented by the reasonably unforeseen circumstances beyond the control of the respondent.

The direct causal link between the reasonably unforeseen circumstances and the ability of the respondent to file the report also underlies the second part of the test for the "best efforts" defense. A respondent must show that the report was properly filed no later than 24 hours after the resolution of the circumstances preventing the timely filing. When the situation (such as a problem with Commission computers) is resolved, the Act's high standard of "best efforts" requires that the respondent file the report within a reasonably short period of time. The *NPRM* requested public comment regarding whether the 24-hour period in the proposed rule was appropriate for the "best efforts" defense. See *NPRM*, 71 FR at 71095. The comment did not address this issue. The Commission has determined that a 24-hour period best serves the interest in disclosure of the information as soon as practicable after the circumstances preventing the timely disclosure are resolved.

C. Examples of Circumstances Under the "Best Efforts" Defense

To provide further guidance to respondents regarding the scope of the "best efforts" defense, the revised rule includes examples of circumstances that will be considered "reasonably unforeseen and beyond the control of the respondent," and examples of circumstances that will *not* be considered "reasonably unforeseen and beyond the control of the respondent." See revised 11 CFR 111.35(c) and (d). The comment argued that the rule should not be limited to examples of defenses that would be unacceptable under the new "best efforts" defense, but should also include examples of defenses that would meet the new defense to provide guidance to

committees and treasurers. The revised rule provides such illustrations. The examples of defenses in the revised rule are the same as proposed in the *NPRM*, except as noted otherwise below. Both sets of examples in revised section 111.35(c) and (d) are non-exhaustive lists and should not be read to override the general requirements of the defense in revised section 111.35(b)(3) as discussed above.

1. Revised 11 CFR 111.35(c)—Reasonably Unforeseen Circumstances Beyond Respondents' Control

Revised section 111.35(c) provides three examples of circumstances that the Commission will consider "reasonably unforeseen and beyond the control" of the respondent under a "best efforts" defense. The first example is that a failure of Commission computers or Commission-provided software, despite the respondent seeking technical assistance, caused the respondent's untimely electronic filing. See revised 11 CFR 111.35(c)(1). This example is similar to the example in the prior rules, in which a failure of Commission computers satisfied the "extraordinary circumstances" defense. See former 11 CFR 111.35(b)(4)(iv); *Admin Fines E&J*, 65 FR at 31790 ("Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control.".)⁸ The revised rule differs from the proposed rule by including the respondent's seeking technical assistance as part of the example. Consistent with the prior defense based on Commission computer failures, the revised example clarifies that political committees must use all Commission resources available to aid with electronic filing, such as technical support manuals and personnel, before a respondent will be considered "prevented" from timely filing by Commission computer or software failures. Thus, any failure of Commission computers, servers, filing system or Commission-provided software of sufficient severity that it results in a respondent being unable to file, despite the respondent seeking assistance from the Commission's technical support personnel, is a

reasonably unforeseen circumstance beyond the respondent's control.

The second example in revised section 111.35(c)(2) is a "widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider." This example covers circumstances in which technological problems at a third-party hub or information transfer location, rather than the Commission's or respondent's computer systems, caused widespread communication failures on the Internet that left the respondent unable to send, or the Commission unable to receive, an electronically filed report. This failure to transmit information must occur irrespective of any failures of the Commission's or respondent's computer systems or Internet service providers. If a respondent demonstrates such a widespread disruption of information transmissions occurred, the Commission will consider it "reasonably unforeseen circumstances that were beyond the control" of the respondent. As with all the examples in revised section 111.35(c)(2), the respondent bears the burden of showing that these reasonably unforeseen circumstances *in fact prevented* the respondent from filing timely, despite attempts to file by any available alternative methods permitted under Commission regulations.⁹ This example has been refined from the proposed rule to clarify the types of transmission failures contemplated.

The final example in the rule states that a "[s]evere weather or other disaster-related incident" is a reasonably unforeseen circumstance beyond the control of the respondent. See revised 11 CFR 111.35(c)(3). Under the prior rule, the Commission deemed certain weather conditions (lasting more than 48 hours) met the "extraordinary circumstances" test, explaining that "natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records" would satisfy the defense. See previous 11 CFR 111.35(b)(1)(iii); *Admin Fines E&J*, 65 FR at 31790. The revised rule permits such severe weather-related events occurring at the respondent's or Commission's location

⁷ The Commission's guidance and instructions to political committees required to file electronically makes clear that if a report is successfully uploaded and accepted by the Commission, a confirmation receipt (including a validation number) is immediately sent to the committee via e-mail, fax or both. If a committee does not receive such a receipt, the committee should not assume the filing was received and should contact the Commission's technical support personnel. See, e.g., "Frequently Asked Questions About Electronic Filing," available at http://www.fec.gov/support/fq_filing.shtml (last visited Mar. 16, 2007); "Common Electronic Filing Mistakes," available at <http://www.fec.gov/elecfil/mistakes.shtml> (last visited Mar. 16, 2007).

⁸ In order to satisfy the prior "extraordinary circumstances" defense, the failure of Commission computers had to last at least 48 hours. See former 11 CFR 111.35(b)(1)(iii). The new "best efforts" defense does not contain any minimum time period for the "reasonably unforeseen circumstances that were beyond the control" of the respondent. See revised 11 CFR 111.35(b)(3).

⁹ The Commission's electronic filing manuals detail step-by-step instructions for the various methods of acceptable electronic filing via the Internet, modem, or by saving the report to a diskette or CD. See, e.g., "FECFile User Manual for Candidate Committees," available at http://www.fec.gov/elecfil/authorized_manual/manual.shtml (last visited Mar. 16, 2007).

to form the basis for a "best efforts" defense. The Commission is not defining with specificity the level of severity for weather or other disaster-related incidents in revised section 111.35(c)(3) because a respondent's challenge must show that the weather or disaster-related incident *in fact prevented* the respondent from filing timely. Given that the effects upon the respondent of each weather or disaster-related incident will vary, the Commission will evaluate the particular facts contained in individual challenges, instead of mandating such details in a rule of general application.

2. Revised 11 CFR 111.35(d)—Circumstances That Are Not Reasonably Unforeseen or Beyond Respondents' Control

Revised section 111.35(d) includes a non-exhaustive list of circumstances that are *not* considered "reasonably unforeseen and beyond the control" of the respondent, and will not support a "best efforts" finding. See revised 11 CFR 111.35(d)(1) through (6). All but two of these examples are drawn from the list of events that did not constitute "extraordinary circumstances" under the Commission's prior rule: Negligence; delays caused by committee vendors or contractors; illness, inexperience or unavailability (including death) of the treasurer or other staff; and committee computer, software or Internet service provider failures. Compare revised 11 CFR 111.35(d)(1) through (4) with former 11 CFR 111.35(b)(4). One example concerns Internet service provider failures. See revised 11 CFR 111.35(d)(4). The proposed rule described this example as failures of committee computers or software. The final rule also includes Internet service provider failures. Because many Internet service providers are available, a failure limited to one provider is not a defense for late filing or not filing. The revised rule adds two examples to this list based upon the Commission's experience with respondent challenges in the AFP: A failure to know filing dates and a failure to use Commission software properly. See revised 11 CFR 111.35(d)(5) and (6).

Under the revised rule, a respondent's challenge will not succeed if its "best efforts" defense is based on any of these circumstances as the cause of the failure to file timely. The Commission notes that the examples in revised section 111.35(d) are not exhaustive, but are illustrative of the types of situations that are not reasonably unforeseen and beyond the respondent's control. The Commission strongly encourages all political committees to name assistant treasurers and have additional staff

available so that their ability to file reports on time will not be compromised due to the unavailability or inexperience of the treasurer or other staff. See *Final Rules on Administrative Fines*, 68 FR 12572, 12573 (Mar. 17, 2003) (adding staff "inexperience" and "unavailability" as examples of circumstances that will not be considered "extraordinary" under former 11 CFR 111.35(b)(4)(iii)).

The Commission's implementation of the "best efforts" defense set forth in this revised rule serves as a proxy for the factual investigation of a respondent's internal practices regarding filing of reports that would ordinarily be necessary to determine whether such practices were sufficient to constitute best efforts. The comment argued that the Commission should conduct a full examination of the business models and management procedures of each committee to determine whether the committee implemented proper back-up systems and other measures reflecting management "best practices" in the relevant industry to reduce the risk of a late filing. However, such an investigation would be resource-intensive for the Commission, burdensome for the respondent, and inappropriate in the AFP, which is a streamlined procedure created by Congress to alleviate the Commission's enforcement burden for routine and minor filing violations. Absent reasonably unforeseen circumstances that were beyond the control of the respondent, the Commission sees no reason why political committees cannot file reports on time.¹⁰ Thus, the Commission's implementation of the "best efforts" defense appropriately incorporates a statutory "best efforts" standard, while taking into account the unique streamlined nature of the AFP.

D. Revised 11 CFR 111.35(e)—Factual Basis for Challenge

The Commission is adding paragraph (e) to 11 CFR 111.35 to require that the respondent's written response must detail the factual basis supporting its challenge. Furthermore, respondents must provide supporting documentation for their challenges. The comment did not address this provision, which is identical to the proposed rule.

The three defenses specified in sections 111.35(b)(1) through (3) (factual

¹⁰ See *Admin Fines E&P*, 65 FR at 31790 (stating that political committees should be aware of their reporting duties and noting that the Commission makes efforts to send reminders of deadlines and political committees have ample time from the end of the reporting period to the filing deadline to prepare and file reports).

error, miscalculation of civil money penalty, and best efforts) are the only permissible grounds for challenging the Commission's RTB finding or proposed civil money penalty, and a respondent's written response must be based on one of these grounds to be considered by the reviewing officer and the Commission. Respondents bear the burden of showing that a permissible defense is satisfied.¹¹

II. Revised 11 CFR 111.37—Commission Review of Respondent's Challenge and Reviewing Officer's Recommendation

A. Revised 11 CFR 111.37(b)—Commission Finding That No Violation Has Occurred

Revised section 111.37 sets forth procedures regarding the Commission's final determination for AFP matters upon receipt of the respondent's challenge and the reviewing officer's recommendation. See revised 11 CFR 111.37(a) through (d). The NPRM sought comment on proposed revisions to section 111.37(b) regarding Commission determinations that no violation has occurred where the RTB finding is based on a factual error, and where the respondent demonstrated it used best efforts to file timely. See NPRM, 71 FR at 71095. The comment did not address these rules. The Commission is revising section 111.37(b) to clarify that the existence of factual errors or a finding of best efforts are complete defenses. Thus, if one of these defenses is satisfied, the Commission will conclude that no violation of FECA has occurred. Please note that the defense based on an incorrect basis for calculating the civil money penalty (section 111.35(b)(2)) is a defense only as to the amount of the civil money penalty and does not serve as a basis for a finding of no violation under the AFP.

B. Revised 11 CFR 111.37(d)—Commission Statement of Reasons in AFP Final Determinations

The NPRM sought comment on proposed revisions to section 111.37(d) to make clear that the reasons for the reviewing officer's recommendation regarding the challenge, unless modified or rejected by the Commission, will serve as the Commission's statement of reasons regarding the final determination in the AFP matter.¹² See NPRM, 71 FR at 71095. This proposed

¹¹ The Commission considers affidavits more persuasive evidence than unsworn statements submitted in support of the respondent's challenge.

¹² These revisions do not affect any statements of reasons the Commissioners may issue in enforcement matters under review.

revision addresses the *Lovely* court's concerns that it was unclear what constituted the statement of reasons for the Commission's final determination in that matter. The comment did not address this issue.

The Commission is revising section 111.37(d) to indicate that, unless otherwise indicated by the Commission, the statement of reasons for the Commission's final determination in an AFP matter consists of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission. See *Lovely*, 307 F. Supp. 2d at 301 (stating that the Commission's "adoption of a reviewing officer's recommendation may suffice in some circumstances"). Statements setting forth additional or different reasons may also be issued. The revised rule also recognizes that the Commission may modify or reject the reviewing officer's recommendation in whole or in part. See 11 CFR 111.37(d). In such cases, the Commission will indicate the grounds for its action and it or individual Commissioners may issue one or more statements of reasons.

Former section 111.37(d) provided that the Commission could determine that a violation of 2 U.S.C. 434(a) had occurred, but waive the civil money penalty because the respondent demonstrated the existence of "extraordinary circumstances" under former section 111.35(b)(1)(iii). See former 11 CFR 111.37(d). As discussed above, the Commission is removing the "extraordinary circumstances" defense and replacing it with a "best efforts" defense in revised section 111.35(b)(3). Under 2 U.S.C. 432(i), if the Commission determines that the treasurer used best efforts in compliance with this rule, there is no violation of FECA and the Commission will so notify the respondent pursuant to revised section 111.37(b). See revised 11 CFR 111.37(b). Therefore, the Commission need not retain the former section 111.37(d).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities affected by these rules are not "small entities" under 5 U.S.C. 601(6). The definition of "small entity" does not include individuals, and classifies a not-for-profit enterprise as a "small organization" if it is independently owned and operated and not dominant

in its field. 5 U.S.C. 601(4). The rules apply to all types of political committees and their treasurers. State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties or any other political committees might be considered "small organizations," the number that would be affected by this rule is not substantial.

Furthermore, any separate segregated funds affected by these rules are not-for-profit political committees that do not meet the definition of "small organization" because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated. Most of the other political committees affected by these rules are not-for-profit committees that do not meet the definition of "small organization." Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

The final rules also do not impose any additional restrictions or increase the costs of compliance for respondents within the AFP. Instead, the final rules provide additional defenses available to political committees and their treasurers, thereby potentially increasing the number of situations in which the Commission assesses no civil money penalty. Moreover, these rules apply only in the AFP, where penalties are proportionate to the amount of a political committee's financial activity. Any political committee meeting the definition of "small entity" would be subject to lower fines than larger committees with more financial activity. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapter A of chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 is revised to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(6); 28 U.S.C. 2461 nt.

■ 2. Section 111.35 is revised to read as follows:

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) The respondent's written response must assert at least one of the following grounds for challenging the reason to believe finding or proposed civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the committee was not required to file the report, or the committee timely filed the report in accordance with 11 CFR 100.19;

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent used best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and

(ii) The respondent filed no later than 24 hours after the end of these circumstances.

(c) Circumstances that will be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) A failure of Commission computers or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;

(2) A widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider; and

(3) Severe weather or other disaster-related incident.

(d) Circumstances that will not be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

- (1) Negligence;
- (2) Delays caused by committee vendors or contractors;
- (3) Illness, inexperience, or unavailability of the treasurer or other staff;
- (4) Committee computer, software or Internet service provider failures;
- (5) A committee's failure to know filing dates; and
- (6) A committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting its challenge and include supporting documentation.

■ 3. In section 111.37, paragraphs (b) and (d) are revised to read as follows:

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

* * * * *

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent used best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

* * * * *

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action will, unless otherwise indicated by the Commission, consist of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission, although statements setting forth additional or different reasons may also be issued. If the reviewing officer's recommendation is modified or not approved, the Commission will indicate the grounds for its action and one or more statements of reasons may be issued.

Dated: March 22, 2007.

Robert D. Lenhard,
Chairman, Federal Election Commission.
[FR Doc. E7-5730 Filed 3-28-07; 8:45 am]
BILLING CODE 6716-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA-2006-26477]

FAA Civil Penalty Adjudication Web Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA has a Web site that provides access to many documents relating to the agency's administrative adjudication of civil penalty cases. Currently, the address provided in the regulations for the civil penalty adjudication Web site is incorrect. In this rulemaking, we are amending the regulations to substitute the correct Web site address.

DATES: This rule is effective on March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila Skojec, Office of the Chief Counsel, Adjudication Branch, 800 Independence Avenue, SW., Washington, DC, 20591; telephone 202/385-8228.

SUPPLEMENTARY INFORMATION:

Background

The FAA assesses civil penalties for violations of certain provisions of the Federal aviation statute and the Federal hazardous materials transportation statute. The rules of practice in 14 CFR 13.16 and 14 CFR part 13, subpart G (14 CFR 13.201-13.235) govern these proceedings involving the adjudication of civil penalties.

The agency has a Web site containing documents relating to the agency's adjudication of civil penalties. These documents include decisions and orders issued by the Administrator, indexes of decisions, contact information for the Hearing Docket and the administrative law judges, the rules of practice, and other information.

We recently discovered that the address for the Web site set forth in 14 CFR 13.210 is incorrect. As a result, we are amending the rules to correct this problem.

This Rulemaking

FAA Civil Penalty Adjudication Web Site. We are amending section 13.210 to correct the Web site address for the FAA civil penalty adjudication Web site. The correct address is: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.

Procedural Matters

In general, under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the change. It is in the public interest for the Rules of Practice to provide the correct address for the civil penalty adjudication Web site as soon as possible.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendments

■ Accordingly, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority section for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5128, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 48101-48111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304-46316, 46318, 46501-46502, 46504-46507, 47106, 47107, 47111, 47122, 47306, 47531-47532; 49 CFR 1.47.

■ 2. Amend § 13.210 by revising paragraphs (c)(2) to read as follows:

§ 13.210 Filing of documents.

* * * * *

(e) * * *

(1) * * *

(2) Decisions and orders issued by the Administrator in civil penalty cases, indexes of decisions, contact information for the FAA Hearing Docket and the administrative law judges, the rules of practice, and other information are available on the FAA civil penalty adjudication Web site at: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.

DECLARATION OF KRISTIN D. ROSER

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Neill for Illinois:
 - A) Reason-to-Believe Letter, dated December 6, 2018, referencing the 2018 October Quarterly Report (sent via overnight mail to the address of record).
4. I hereby certify that I have searched the Commission's public records and find that Neill for Illinois filed the 2018 October Quarterly Report with the Commission on October 29, 2018.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 12th day of March, 2019.

Kristin D. Roser

Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission

DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) A principal campaign committee shall file a report for the quarter ending September 30 no later than October 15. Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time October 15, 2018 for the 2018 October Quarterly Report to be timely filed.
- 3) I hereby certify that I have searched the Commission's public records and that the documents identified herein are the true and accurate copies of:
 - a) Cover, Summary, and Detailed Summary Pages of the 2018 October Quarterly Report filed by Neill for Illinois and Andrew Nall, in his official capacity as Treasurer. The report includes the coverage period of July 1, 2018 through September 30, 2018 and was electronically filed on October 29, 2018.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington, D.C. on the 13th day of March, 2019.

Rhiannon Magruder
Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF
COMMITTEE (in full)

TYPE OR PRINT ▼

Example: If typing, type
over the lines.

12FE4M5

NEILL FOR ILLINOIS

ADDRESS (number and street)

PO BOX 30

Check if different
than previously
reported. (ACC)

DEKALB

IL

60115

CITY ▲

STATE ▲

ZIP CODE ▲

2. FEC IDENTIFICATION NUMBER ▼

C: C00634873

3. IS THIS
REPORT

x

NEW
(N)

OR

AMENDED
(A)

STATE ▼ DISTRICT

IL

16

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

April 15 Quarterly Report (Q1)

July 15 Quarterly Report (Q2)

x: October 15 Quarterly Report (Q3)

January 31 Year-End Report (YE)

Termination Report (TER)

(b) 12-Day PRE-Election Report for the:

Primary (12P)

General (12G)

Runoff (12R)

Convention (12C)

Special (12S)

Election on M M / D D / Y Y Y Y

in the
State of

(c) 30-Day POST-Election Report for the:

General (30G)

Runoff (30R)

Special (30S)

Election on M M / D D / Y Y Y Y

in the
State of

5. Covering Period

M M / D D / Y Y Y Y
07 01 2018

through

M M / D D / Y Y Y Y
09 30 2018

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Nall, Andrew, . .

Type or Print Name of Treasurer

Nall, Andrew, . .

Signature of Treasurer

[Electronically Filed]

Date

M M / D D / Y Y Y Y
10 29 2018

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. §30109.

Office
Use
Only**FEC FORM 3**
(Revised 05/2016)

SUMMARY PAGE

of Receipts and Disbursements

FEC Form 3 (Revised 05/2016)

PAGE 2 / 8

Write or Type Committee Name
NEILL FOR ILLINOIS

Report Covering the Period: From: ^{M M / D D / Y Y Y Y} 07 01 2018 To: ^{M M / D D / Y Y Y Y} 09 30 2018

	COLUMN A This Period	COLUMN B Election Cycle-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e)).....	4322.32	203142.67
(b) Total Contribution Refunds (from Line 20(d))	0.00	2800.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from Line 6(a))	4322.32	200342.67
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	454.43	210342.67
(b) Total Offsets to Operating Expenditures (from Line 14)	0.00	0.00
(c) Net Operating Expenditures (subtract Line 7(b) from Line 7(a))	454.43	210342.67
8. Cash on Hand at Close of Reporting Period (from Line 27)	0.00	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	10000.00	

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Toll Free 800-424-9530
Local 202-694-1100

DETAILED SUMMARY PAGE of Receipts

FEC Form 3 (Revised 05/2016)

PAGE 3 / 8

Write or Type Committee Name

NEILL FOR ILLINOIS

Report Covering the Period: From: MM / DD / YYYY 07 01 2018

To: MM / DD / YYYY 09 30 2018

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
11. CONTRIBUTIONS (other than loans) FROM:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A)	0.00	172459.58
(ii) Unitemized	0.00	23680.77
(ii) TOTAL of contributions from Individuals	0.00	196120.35
(b) Political Party Committees	0.00	0.00
(c) Other Political Committees (such as PACs)	0.00	0.00
(d) The Candidate	4322.32	7022.32
(e) TOTAL CONTRIBUTIONS (other than loans) (add Lines 11(a)(ii), (b), (c), and (d))	4322.32	203142.67
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES	0.00	0.00
13. LOANS:		
(a) Made or Guaranteed by the Candidate	0.00	10000.00
(b) All Other Loans	0.00	0.00
(c) TOTAL LOANS (add Lines 13(a) and (b))	0.00	10000.00
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	0.00	0.00
15. OTHER RECEIPTS (Dividends, Interest, etc.)	0.00	0.00
16. TOTAL RECEIPTS (add Lines 11(e), 12, 13(c), 14, and 15) (Carry Total to Line 24, page 4)	4322.32	213142.67

DETAILED SUMMARY PAGE of Disbursements

FEC Form 3 (Revised 05/2016)

PAGE 4 / 8

II. DISBURSEMENTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
17. OPERATING EXPENDITURES.....	454.43	210342.67
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES	0.00	0.00
19. LOAN REPAYMENTS:		
(a) Of Loans Made or Guaranteed by the Candidate.....	0.00	0.00
(b) Of All Other Loans	0.00	0.00
(c) TOTAL LOAN REPAYMENTS (add Lines 19(a) and (b)).....	0.00	0.00
20. REFUNDS OF CONTRIBUTIONS TO:		
(a) Individuals/Persons Other Than Political Committees	0.00	2800.00
(b) Political Party Committees.....	0.00	0.00
(c) Other Political Committees (such as PACs).....	0.00	0.00
(d) TOTAL CONTRIBUTION REFUNDS (add Lines 20(a), (b), and (c)).....	0.00	2800.00
21. OTHER DISBURSEMENTS	0.00	0.00
22. TOTAL DISBURSEMENTS (add Lines 17, 18, 19(c), 20(d), and 21) ►	454.43	213142.67

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD.....	- 3867.89
24. TOTAL RECEIPTS THIS PERIOD (from Line 16, page 3).....	4322.32
25. SUBTOTAL (add Line 23 and Line 24).....	454.43
26. TOTAL DISBURSEMENTS THIS PERIOD (from Line 22).....	454.43
27. CASH ON HAND AT CLOSE OF REPORTING PERIOD (subtract Line 26 from Line 25).....	0.00



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 13, 2019

Andrew Nall
Neill for Illinois
16283 Waterman Rd.
Dekalb, IL 60115

AF#: 3533
C00634873

Dear Mr. Nall:

On December 4, 2018, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Neill for Illinois and you, in your official capacity as Treasurer ("respondents"), violated 52 U.S.C. § 30104(a) for failing to timely file the 2018 October Quarterly Report. The Commission also made a preliminary determination that the civil money penalty was \$118 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination and assess a civil money penalty. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 1050 First Street, NE, Washington, DC 20463 or via facsimile (202-208-3333). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

Rhiannon Magruder
Rhiannon Magruder
Reviewing Officer
Office of Administrative Review



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION

2019 APR 24 PM 1:50

SENSITIVE

April 24, 2019

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 3533 - Neill for Illinois and Andrew Nall, in his official capacity as Treasurer (C00634873)

On December 4, 2018, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2018 October Quarterly Report and made a preliminary determination that the civil money penalty was \$118 based on the schedule of penalties at 11 C.F.R. § 111.43.

On January 28, 2019, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer Recommendation ("ROR") dated March 13, 2019 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$118 civil money penalty.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). To date, a response has not been received.

[illegible]

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 3533
Final Determination Recommendation -)
Neill for Illinois and Andrew Nall, in his)
official capacity as Treasurer)
(C00634873))

CERTIFICATION

I, Dayna C. Brown, Secretary and Clerk of the Federal Election
Commission, do hereby certify that on May 14, 2019, the Commission decided
by a vote of 4-0 to take the following actions in AF 3533:

1. Adopt the Reviewing Officer recommendation for AF# 3533
involving Neill for Illinois and Andrew Nall, in his official capacity
as Treasurer, in making the final determination.
2. Make a final determination in AF# 3533 that Neill for Illinois and
Andrew Nall, in hi official capacity as Treasurer, violated 52 U.S.C.:
§ 30104(a) and assess a \$118 civil money penalty.
3. Send the appropriate letter.

Commissioners Hunter, Petersen, Walther, and Weintraub voted
affirmatively for the decision.

Attest:

May 15, 2019
Date

Dayna C. Brown
Dayna C. Brown
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 2019

Andrew Nall
Neill for Illinois
16283 Waterman Rd.
Dekalb, IL 60115

AF#: 3533
C00634873

Dear Mr. Nall:

On December 4, 2018, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Neill for Illinois and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2018 October Quarterly Report. By letter dated December 6, 2018, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$118 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On January 28, 2019, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Neill for Illinois and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assess a civil money penalty in the amount of \$118 in accordance with 11 C.F.R. § 111.43. The Reviewing Officer Recommendation was sent to you on March 13, 2019.

On May 14, 2019, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Neill for Illinois and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assessed a civil money penalty in the amount of \$118. A copy of the Final Determination Recommendation is attached.

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside.

See 52 U.S.C. § 30109(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 52 U.S.C. § 30109. 11 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.* If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact you to request payment. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, follow the payment instructions on page 4 of this letter. You should make payment within thirty (30) days of receipt of this letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money

order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$118 for the 2018 October Quarterly Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form. This penalty may also be paid by check or money order made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
PO Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Neill for Illinois

FEC ID#: C00634873

AF#: 3533

PAYMENT AMOUNT DUE: \$118

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 3533